IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 10800 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRAMODBHAI MANILAL PATEL - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR BHUNESH C RUPERA for Applicant(s) : 1,
Mr. KT Dave, Addl. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 20/09/2007
JUDGMENT

Rule. Shri KT Dave, learned APP waives service of Rule on behalf of the respondent State. By way of this application under Section

482 of the Code of Criminal Procedure the applicant original-accused No.1 has prayed for an appropriate order to quash and set aside the complaint being C.R. No.I-121/2007 filed before Vejalpur police station, Ahmedabad on 19th March 2007.

2. The criminal complaint has been filed against the applicant and others on 19th March 2007 with the Vejalpur police station, Ahmedabad by respondent No.2 herein for the offences punishable under Sections 452. 427, 323, 294(B) and 114 of the Indian Penal Code. I452. 427, 323, 294(B) and 114 of the Indian Penal Code. It is the case on behalf of the applicant original-accused No.1 that in view of the affidavit of respondent No.2 original-complainant, there is a settlement entered into between them and that there is no dispute between them and therefore the impugned complaint/FIR requires to be quashed and set aside.

3. Learned advocate appearing on behalf of applicant, original-accused No.1 has relied upon the decision of the Hon'ble Supreme Court in the case of ***B.S. Joshi Vs. State of Haryana***, reported in *(2003) 4 S.C.C. Page 675*; unreported decisions of this Court rendered in *Criminal Misc. Application No. 10069 of 2003; Criminal Misc. Application No. 2978 of 2004; and Special Criminal Application No. 186 of 2004* in support of his prayer to quash and set aside the impugned FIR on the ground of settlement entered into between the parties.

4. The prayer to quash the impugned FIR is opposed by the learned APP, Shri KT Dave while submitting that entering into settlement between the parties subsequently after commission of the offence is no ground to quash and set aside the FIR when a prima facie cognizable offence is made out, and the principle laid down in the decision of the Hon'ble Supreme Court in the case of *B.S. Joshi (supra)* is not to be made

applicable in each and every case even if there is settlement entered into between the parties after commission of the offence. It is submitted that the case before the Hon'ble Supreme Court was related to matrimonial dispute between husband and wife and family members where it was found that the husband and wife were residing happily and there being no dispute in the facts and circumstances of that case the Hon'ble Supreme Court quashed and set aside the complaint/FIR by further observing that to continue the criminal proceedings against them would be unnecessary harassment and that there were bleak chances of conviction. He has further submitted that there is no absolute proposition of law laid down by the Hon'ble Supreme Court in the case of *B.S. Joshi (supra)* that in every case irrespective of seriousness of an offence whenever there is a settlement between the parties after commission of an offence the complaint/FIR concerned requires to be quashed and set aside. He has further submitted that the

other decisions of this Court relied upon by the learned advocate appearing for the applicant are also to be considered in the facts and circumstances of each case and that there cannot be any absolute proposition of law that in each and every case where there is settlement after commission of offence the FIR in question requires to be quashed and set aside. Under these circumstances, it is submitted that looking to the facts and circumstances and the averments and allegations made in the FIR, it require further investigation and the FIR is not required to be quashed and set aside solely on the ground that there is a settlement between the parties concerned.

5. Heard the learned advocates appearing on behalf of the respective parties. At the outset, it is required to be noted that the applicant and others are charged for the offences under Section 452. 427, 323, 294(B) and 114 of the Indian Penal Code. It is also required to be noted at this

stage that the offence under Section 452 is not compoundable under Section 320 of the Cr.P.C. There are serious allegations levelled against the applicant and others in the complaint and on considering the allegations and averments in the complaint it prima facie discloses cognizable offence punishable under the provisions of Indian Penal Code which require further investigation. There is no chargesheet filed and therefore the question of compounding the offence may require consideration only after chargesheet is filed. Even otherwise, considering the averments and allegations in the FIR it cannot be said that the case does not require further investigation and/or the complaint/FIR is so vexatious which requires to be quashed and set aside in exercise of powers under Section 482 of the Code of Criminal Procedure. Now, the only contention raised in the present petition is that there is some settlement between the applicant and the original-complainant and therefore the impugned complaint/FIR requires to be quashed and set

aside. For that purpose as stated above the learned advocate has heavily relied upon the decision of the Hon'ble Supreme Court in the case of B.S. Joshi (supra). The case before the Hon'ble Supreme Court was relating to matrimonial dispute between husband and wife and family members and having found that the husband and wife in that case were staying/residing happily and having considered the facts and circumstances of that case, the Hon'ble Supreme Court observed that to continue the criminal proceedings against them in the facts and circumstances of that case would be unnecessary harassment to the parties more particularly when they were staying happily and there were bleak chances of conviction. There is no absolute proposition of law laid down by the Hon'ble Supreme Court in its decision in the case of *B.S. Joshi (supra)* as sought to be canvassed on behalf of the applicant. Merely because some settlement has taken place between the parties after commission of offence the complaint/FIR is not required to be quashed and

set aside only on that ground. In some case an accused person after committing an offence of murder and/or committing any other serious offence may come before the Court after registration of a complaint/FIR and request for quashing such complaint on the ground that subsequently settlement has been arrived at between the parties. Each case is required to considered on the facts of each case. Under these circumstances, the reliance placed upon the decision of the Hon'ble Supreme Court in the case of B.S. Joshi (supra) is required to be considered only in cases where the fact situation is similar to the one before the Hon'ble Supreme Court. In the facts and circumstances of the case on hand, considering the seriousness of the allegations against the applicant and others, the impugned FIR is not required to be quashed and set aside. The decisions of this Court relied upon by the applicant as referred to hereinabove are not to be made applicable in all cases as there cannot be any absolute proposition of law

that wherever there is settlement after commission of offence the complaint in question requires to be quashed and set aside. Under the circumstances, there is no substance in the present application and the same is required to be dismissed. It is accordingly dismissed. Rule is discharged.

[M.R. Shah, J.]

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